



Applying RCRA Cleanup Reforms to RCRA Brownfields



What Are RCRA Brownfields?

EPA defines brownfields as real property, the expansion, redevelopment or reuse of which may be complicated by the presence or potential presence of a hazardous substance, pollutant, or contaminant. Brownfields can be located in urban, suburban, or rural areas. Brownfields may be subject to regulation or cleanup under the *Resource Conservation and Recovery Act (RCRA)* if the facilities actively managed material that is defined as hazardous waste in the regulations. Examples of these facilities include metal finishing, auto body and repair, dry cleaning, chemical manufacturers, foundries, locomotive and railcar maintenance operations, steelworks, and other types of facilities that, for example, treated hazardous waste to reduce its volume or remove its hazardous characteristics, stored the waste in drums or tanks for over 90 days, or disposed of it in on-site landfills or surface impoundments.



Contaminants present at these properties also may be subject to regulation or cleanup under other statutes, including Superfund or the Toxic Substances Control Act. In such instances, property owners/operators may have to comply directly with cleanup requirements imposed by these programs. What makes the RCRA brownfields effort unique is that it links the Brownfields Program with the RCRA Cleanup Reforms to help local communities deal with contaminated, blighted properties that may stand in the way of economic viability of the property, and, on occasion, the community.

The RCRA Cleanup Reforms

To expedite RCRA corrective action, EPA initiated two rounds of RCRA Cleanup Reforms. The Reforms build upon actions taken by EPA and the states in recent years to accelerate cleanups by establishing an environment for program implementors to be innovative and results-oriented. Specifically, the 1999 Reforms were designed to achieve faster, focused, and more flexible cleanups. The 2001 Reforms built upon the 1999 Reforms and were designed to foster creative solutions to cleanups. The intent of the reforms is to expedite cleanups at RCRA facilities, including brownfields, while ensuring protection of human health and the environment. Implementation of the reforms includes:

- issuing program guidance and tools;
- piloting innovative approaches to corrective action;



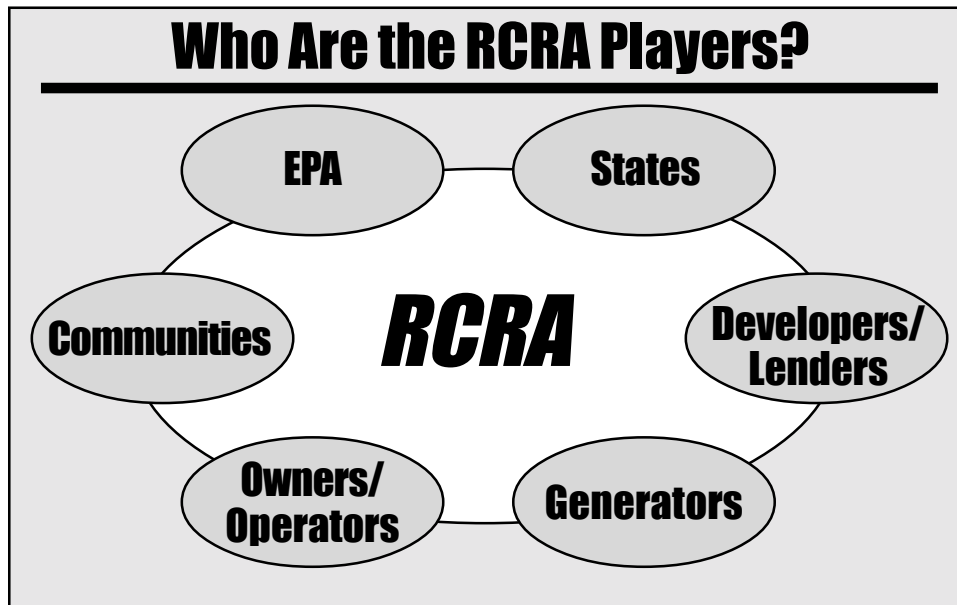


Brownfields may be subject to regulation or cleanup under RCRA if the facilities actively managed hazardous waste, as defined in the RCRA regulations.



- developing training and outreach for program implementors, the regulated community, and other stakeholders;
- providing more effective public access to cleanup information;
- enhancing opportunities for public involvement in cleanup and reuse and redevelopment decisions; and
- capitalizing on redevelopment potential to expedite cleanups by supporting RCRA Brownfields Prevention projects.

A fact sheet on these reforms can be found at: <http://www.epa.gov/epaoswer/hazwaste/ca/reforms.htm>



What Are Some of the Products of the RCRA Reforms?

Results-Based Approaches to Corrective Action (draft), available at: http://www.epa.gov/epaoswer/hazwaste/ca/resource/guidance/gen_ca/results.htm.

Handbook of Groundwater Policies for RCRA Corrective Action (draft), available at: <http://www.epa.gov/epaoswer/hazwaste/ca/resource/guidance/gw/gwhandbk/gwhndbk.htm>.

Corrective Action Completion Guidance (draft), available at: <http://www.epa.gov/correctiveaction/complete.pdf>.

Management of Remediation Waste under RCRA (1998), available at <http://www.epa.gov/correctiveaction/resource.htm>, summarizes guidance and policy on the management of remediation waste. It discusses many of the rules and approaches used to expedite the brownfields cleanup and redevelopment process.

“Comfort/Status” Letters. Developers and potential purchasers of RCRA properties often seek reassurances that the facility has been successfully addressed and that EPA does not intend to pursue additional corrective action at the facility. EPA is working with states to identify methods of providing letters indicating the information

known about a facility and outlining the state's or EPA's expected intent based upon current knowledge. While it is understood that these letters do not act as a release from liability in the event that additional information indicates there is a problem, they do provide some useful information and a level of comfort. EPA has examples of letters that have been used to spur cleanup and redevelopment at Superfund facilities and has developed some generic drafts of letters as models for use at RCRA facilities.

What Are Some of the Flexibilities in RCRA Regulations That Could Be Used at Brownfields Sites?

HWIR Media Rule (*Hazardous Waste Identification Rule for Contaminated Media*) November 30, 1998 (63 FR 65874) <http://www.epa.gov/epaoswer/hazwaste/id/hwirmdia.htm>:

- makes it faster and easier for facilities to obtain permits for treating, storing, and disposing of remediation wastes;
- provides that obtaining a permit at cleanup-only facilities will not subject the owner/operator to facility-wide corrective action;
- creates a unit called a "staging pile" that allows more flexibility in temporarily storing remediation waste during cleanup;
- excludes dredged materials from RCRA Subtitle C if they are managed under an appropriate permit under the Marine Protection, Research, and Sanctuaries Act or the Clean Water Act; and
- makes it faster and easier for states to receive authorization when they update their RCRA programs to incorporate revisions to the federal RCRA regulations.

CAMU rule (*Corrective Action Management Unit and Temporary Unit regulations*) February 16, 1993 (55 FR 8658):

- creates two units designed to increase flexibility in the way remediation wastes are managed; and
- EPA and authorized states may develop and impose site-specific design, operating, closure, and post-closure requirements for land-based CAMUs.
- Amendments to this rule were published in the *Federal Register* on January 22, 2002, and provide a more structured process for approving a CAMU and provide more standards for the design and performance of the CAMU.

LDR rule (*Land Disposal Restrictions Phase IV rule*) May 26, 1998 (63 FR 28556):

- amends the LDR treatment standards for soil contaminated with hazardous waste and creates standards that are more technically and environmentally appropriate to contaminated soils than those which currently apply.

Area of Contamination (AOC) approach (*National Contingency Plan preamble*) March 8, 1990 (55 FR 8758-8760):

- allows contiguous areas of generally dispersed contamination to be considered RCRA units (usually landfills);
- allows wastes to be consolidated or treated *in situ* within an AOC without triggering land disposal restrictions or minimum technology requirements;



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- applies to any hazardous remediation waste (including non-media wastes) that is in or on contiguous parcels;
- covers only consolidation and other *in situ* waste management techniques carried out within an AOC; and
- *ex situ* waste management or the transfer of wastes from one area of contamination to another may be addressed under CAMU provisions, above, or the generator provisions found under 40 CFR 262.34.

Treatability variance approach promulgated August 17, 1988 (53 FR 31199) and clarified December 5, 1997 (62 FR 64504):

- Regulations for site-specific LDR treatment variances allow EPA and authorized states to establish a site-specific LDR treatment standard on a case-by-case basis when a nationally applicable treatment standard is not achievable or is inappropriate;
- Provides for public notice and a reasonable opportunity for public comment before granting or denying a site-specific LDR treatment variance; and
- Since 1996, EPA has encouraged states to become authorized to approve variances.

